

SEP 11 1947

SEP 11 1947

RECEIVED

DEPARTMENT OF STATE

Afghanistan/Iran

Rec'd
Aug. 23, 1947

No. 467

American Embassy,
Tehran, Iran, August 11, 1947

ACTION:
NEA ~~CONFIDENTIAL~~

INFO: Subject: Helmand River Dispute

OCD
OCR
ITP
OFD
LE THE HONORABLE

WAR THE SECRETARY OF STATE,
NAVY
CIG WASHINGTON

A-0-0-0 Sir:

I have the honor to refer to the Department's telegram No. 280, May 29, 1947, and confidential instructions No. 109 of June 10, 1947, and No. 111 of June 20, 1947, relative to the current dispute between Iran and Afghanistan regarding the waters of the Helmand River. In accordance with the Department's instructions, the pamphlets transmitted by the Department relative to the International Joint Commissions between the United States and Canada and the United States and Mexico were forwarded to the Acting Iranian Foreign Minister on July 18, 1947, and a copy of my note on the subject is enclosed for the Department's information. There is also enclosed a copy of the enclosure to my note, consisting of a memorandum summarizing the salient features of the documents in question.

1/
2/

As of possible interest to the Department, I am also transmitting herewith a memorandum entitled "Recommendations with Respect to Helmand River Question" prepared by Miss Betty Lou Firstenberger, a teacher at the American Women's College, Istanbul, who has been employed under contract to perform certain specific research work for the Embassy during July and August. The memorandum was not submitted to the Foreign Office but served as background for oral discussions which I have had with Iranian and Afghan officials in Tehran.

3/

The Afghan Ambassador here had expressed an interest in the material which we were forwarding to the Foreign Office and, accordingly, arrangements were made for Miss Firstenberger to call on him prior to the submission of my note of July 18, 1947, to the Acting Minister of Foreign Affairs. There is enclosed a copy of a memorandum regarding her conversation with the Afghan Ambassador, who was invited to look over the pamphlets in question and who was given a copy of the memorandum which forms enclosure No. 2 to this despatch. It will be observed that the Ambassador expressed considerable doubts as to the setting up by the Afghan and Iranian Governments of any joint commission which would have authority comparable to that of the International Joint Commission between the United States and Canada. It is my impression from such conversations which I have had with the Iranian officials on the subject that they share these doubts.

4/

The Embassy will

~~CONFIDENTIAL~~

VITAL STORAGE

25X1

Tehran, Iran
August 11, 1947
Despatch No. 467

- 2 -

The Embassy will continue to follow this matter closely and will endeavor to be of any possible assistance to the two governments concerned.

Respectfully yours,

George V. Allen
American Ambassador

Enclosures:

1. Copy of Note to Foreign Office dated July 18, 1947.
2. Copy of Enclosure to Note to Foreign Office dated July 18, 1947.
3. Memorandum entitled "Recommendations with Respect to Helmand River Question"
4. Memorandum of conversation with the Afghanistan Ambassador.

800
EWilson:ceh

25X1

To Department in Original and Hectograph
Copy to American Legation, Kabul, Afghanistan

Enclosure No. 1 to Despatch No. 467, dated August 11, 1947,
from American Embassy, Tehran, Iran.

COPY

American Embassy,
Tehran, Iran, July 18, 1947

No. 739

Excellency:

I have the honor to refer to our recent conversation with reference to the discussions which the Iranian Government is having currently with the Afghan Government regarding the waters of the Helmand River, and to transmit herewith for the information and possible use of your Government a set of pamphlets which have been sent to this Embassy by the Department of State at Washington. These documents set forth the organization and functions of the International Joint Commission and the International Boundary and Water Commission which have been established by the United States with Canada and Mexico, respectively. Copies of these documents are also being submitted to the Afghan Government by the American Legation at Kabul.

There is also enclosed as of possible interest to Your Excellency a memorandum prepared in this Embassy after examination of the documents in question. This memorandum summarizes the salient features of the two commissions to which reference is made in the material.

Accept, Excellency, the assurance of my highest consideration.

/s/ GEO. V. ALLEN

Enclosures:

His Excellency

Mohammad Ali Homayoundjah,

Acting Minister of Foreign Affairs,

Tehran.

Enclosure No. 1 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 2 -

Enclosures:

Pamphlets -

United States Department of State. International Boundary and Water Commission, United States and Mexico. Flow of the Rio Grande and Tributary Contributions. 1945. Water Bulletin No. 15.

United States Department of State. Treaty Between the United States of America and Canada. Boundary Waters and Questions Arising Along the Boundary Between the United States of America and Canada. (1909) Treaty Series, No. 548. Washington: 1931.

United States Department of State. Treaty Between the United States of America and Mexico. Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande. (1944) Treaty Series, No. 994. Washington: 1946.

Burpee, Lawrence J. "Good Neighbours". Contemporary Affairs. Canadian Institute of International Affairs. Toronto: 1940.

Burpee, Lawrence J. "From Sea to Sea". Canadian Geographical Journal. Vol. XVI, No. 1. 1938.

Functions, Powers and Duties of the International Joint Commission and of the International Boards Operating under its Jurisdiction. Ottawa: 1935.

Kyte, George W. Organization and Work of the International Joint Commission. Ottawa: 1937.

Papers Relating to the Work of the International Joint Commission. Ottawa: 1929.

Memorandum, dated July 16, 1947.

800

EM:llson;vcm

Enclosure No. 2 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

July 16, 1947

MEMORANDUM: The International Joint Commission and the
International Boundary & Water Commission.

The International Joint Commission, created under the provisions of the Treaty of 1909 concluded between Canada and the United States, had a threefold purpose: 1) to settle disputes involving the use of boundary waters (i.e. lakes on the border), rivers flowing out of boundary waters, and rivers flowing across the boundary; 2) to investigate important problems arising along the common frontier not necessarily connected with these waterways; 3) to settle all questions then pending between the United States and Canada involving the rights, obligations, and interests of either in relation to the other or to the inhabitants of the other along their common frontier. The creation of such a commission was unprecedented in international relations, for the International Joint Commission was not established as a purely investigatory or advisory body but rather was empowered with judicial authority to decide such cases as might come within its jurisdiction.

The Commission is composed of six members, three appointed by the President of the United States and three appointed by the King of Great Britain upon recommendation of the Canadian Government. The salaries and personal expenses of the Commission are paid by their respective Governments, and all necessary joint expenses incurred by the Commission are equally divided. The Commission adopts its own rules of procedure.

Under Articles III and IV of the Treaty the Commission is vested with authority to settle all problems involving the

use

Enclosure No. 2 to Despatch No. 167, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 2 -

use of diversion of boundary waters, of rivers flowing across the boundary, or of rivers flowing from boundary waters. Therefore, no individual or corporation within the United States or Canada may construct a mill or power dam on a boundary stream or undertake any project which may affect the level or flow of the boundary waters on the other side without first obtaining the approval of the Commission. The plans are first submitted to the Government in whose territory the proposed project is to be located; upon Governmental approval, the application then goes to the Commission which holds public hearings in order that all parties concerned may be given the opportunity to present their respective views and recommendations. The Commission then meets in executive (i.e. private) session, weighs the material presented, and renders a decision which is published in a formal Order. Such decisions rendered by a majority of the Commission are binding not only on the applicant but also on both Governments, and if disagreement should occur, it is provided that separate reports shall be made by the commissioners on each side to their own Government setting forth the conclusions arrived at regarding the matter. The two Governments will attempt to reach an agreement which is then referred back to the Commission which takes the necessary steps to implement the agreement.

The Commission has at times found it necessary in issuing Orders of Approval to provide for the creation of International Boards of Control, whose function it is to ensure that the provisions of the Commission's Orders are observed. Such a Board normally consists of two engineers, one appointed by the Canadian Government and one appointed by the United States Government. The Boards always are furnished technical data and information necessary to keep

Enclosure No. 2 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 3 -

to keep them fully informed as to all matters requiring their supervision. The Boards conduct inspections from time to time and report directly and regularly to the Commission. In event of disagreement between members of the Boards, the decision rests with the Commission.

Under Article VI the Commission functions more definitely in an administrative capacity. In this case, the Treaty provided for the creation of a Control Board, under the direction of the Commission, whose duty it was to measure and divide the waters of two rivers which flow across the international boundary so as to ensure equal apportionment for irrigation purposes to the farmers of both countries.

Article IX recognizes the Commission as an investigatory body to which the national governments may refer cases for investigation, analysis, and report. The Commission is permitted to avail itself of the services of governmental agencies in both countries to carry out extensive surveys and investigations in the field. In each case so referred, the Commission examines the case, conducts an investigation, and submits its report, together with appropriate conclusions and recommendations, to both Governments; and there its responsibility ends. The report is in no way to be regarded as a decision or to possess the character of an arbitral award.

Article X grants the Commission fuller authority and wider responsibility in questions which may arise anywhere in the country, involving the rights, obligations, or interests of the United States or Canada either in relation to each other or their respective inhabitants, provided that the matter has been

referred

Enclosure No. 2 to Despatch No. 467, Dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 4 -

referred to the Commission by both Governments with the approval of the United States Senate. As in cases handled under Article IX, the Commission examines and reports the facts and circumstances of the particular questions and matters referred, but its authority differs from that granted under Article IX in that it is authorized to render a decision that is equivalent to that of a court of final jurisdiction. Should the Commissioners be unsuccessful in rendering a majority decision, reports are sent to both Governments who thereupon refer the matter to an umpire.

The Commission is not equipped with executive powers to enforce its decisions; but this absence of power has not in any way deprived it of effectiveness. For this Commission is the creation, made in good faith, of the Canadian and United States Governments, and with them rests the responsibility of enforcing the Commission's decisions. Thus far, all decisions of the Commission have been unanimous except one, in which case one Canadian member joined with the three American members and rendered a final decision. Similarly, all final decisions of the Commission and reports submitted with their conclusions and recommendations have been accepted as satisfactory by both Governments.

This method of dealing with international problems has been regarded in the United States and Canada as far superior to settlement through the circuitous and lengthy procedure of regular diplomatic channels. It has led to a straightforward handling of cases, and it has strengthened in the people themselves a greater appreciation for the principles of justice. When the individual has the opportunity to present his case openly before a tribunal whose decisions he knows to be determined upon sworn testimony

Enclosure No. 2 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 5 -

testimony and according to the principles of law, his respect for human rights and his duties as a responsible citizen are broadened by this experience. It results in a type of political education much to be desired and a judicial settlement of international questions which is the most efficient and advanced method yet to be proposed.

The International Boundary and Water Commission, United States and Mexico, was established in 1889 to facilitate the carrying out of principles embodied in the Treaty of November 12, 1884, between the two countries and to avoid difficulties that might arise owing to the changes which take place in the beds of the Rio Grande and Colorado Rivers. The nature of this Commission differs from that of the (American-Canadian) International Joint Commission in that it functions more as an administrative body than as an international tribunal.

The Commission is composed of a United States Section and a Mexican Section, the head of each being an Engineer Commissioner, and is permitted to employ such assistants and engineers and legal advisers as may be necessary. Each Section maintains exclusive jurisdiction and control over that part of the works located within the territorial limits of its own country and may not extend its jurisdiction without the consent of the Government of the other. Each Government bears the expenses for the maintenance of its own Section, and joint expenses are borne equally by the two Governments.

The Commission regulates the diversion of water of the Rio Grande and its tributaries, and plans and supervises the construction of projects agreed upon by the two Governments. The
Commission

Enclosure No. 2 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 6 -

Commission also studies, investigates, and prepares plans for flood control works and hydro-electric plants. These plans are submitted as recommendations to both Governments in a report covering the plan of construction, the part for which each Government is responsible, and the estimated cost of the project. Only after receiving the approval of both Governments for said project does the Commission proceed with the operation.

At any time the Commission is authorized to divert the water belonging to one country to the use of the other if the former does not need it or is unable to utilize it, provided that it is only a matter of temporary diversion, as might occur during periods of extreme drought.

It is the duty of the Commission to keep records and compile statistical data in order to furnish the two Governments with the information requested. In order to obtain the hydrographic data necessary each Section is responsible for maintaining gaging stations at the expense of its own Government. The Commission also submits an annual report to the two Governments on general matters which come under its jurisdiction and prepares joint reports on any particular matters requested by the two Governments.

The judicial authority of the Commission is limited to the adjustment of differences between the two Governments with respect to the interpretation or application of terms of the treaty, but such decisions are always subject to the approval of both Governments. In event of failure to settle the difference, the matter is referred to both Governments and handled through diplomatic channels.

This Commission represents an effort on the part of two

sovereign

Enclosure No. 2 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

COPY

- 7 -

sovereign Governments to administer jointly a frontier and waterways common to both. Its work has been instrumental in cementing the bonds of mutual friendship between the United States and Mexico. However, the scope of the Commission's activities is continually restricted by the authority of two strong sovereign governments. The Commission's function is advisory and supervisory only, and it lacks the power of authority delegated to the International Joint Commission. A particle of jurisdiction is entrusted to it in the settlement of disputes to which its observance and execution give rise, but it has not yet attained the status of an international tribunal in the adjustment of such matters. It is hoped that this eventuality may result with the continued success of the Commission and the increased confidence of the two nations in each other.

Enclosure No. 3 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

Recommendations with Respect to Helmand River Question

The bonds which unite Canada and the United States are not unlike those common to Iran and Afghanistan, i.e. language, religion, and of foremost and immediate interest, a common frontier. Documentary evidence illustrates the recent trend in Afghan-Iranian relations toward the attainment of mutual understanding and cooperation. With the unratified Treaty of 1938 regarding the distribution of waters of the Helmand River serving as a basis for future joint agreements and weighing the evidence, which appears to be wholly favorable, of the success of the International Joint Commission, it would appear advisable to recommend to the Afghan and Iranian Governments the creation of a body similar in function to that of the United States-Mexican Commission but vested with increased authority to settle disputes, strictly related to boundary waters, in accordance with the provisions of Articles III, IV, VI, VIII of the Treaty of 1909 with Canada.

The Irano-Afghan Treaty of 1938 provided for a joint staff of technical experts to measure and regulate the diversion of water of the Helmand River and to settle disputes that might arise in that sphere. Should a given matter not come under the jurisdiction of these officials, it was to be referred to a joint commission of Iranian and Afghan government officials. This, essentially, is the type of function performed by the (Mexican) International Boundary and Water Commission. Although the Treaty of 1938 has never been fully ratified by the two Parties, the precedent has nevertheless been established for the creation of a joint administrative staff. It is further

recommended

Enclosure No. 3 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

- 2 -

recommended that the powers of such a commission be broadened and modeled along the lines of the (American-Canadian) International Joint Commission so as to eliminate a good deal of governmental red tape and develop a stronger sense of responsibility among the members of the commission. Should the latter recommendation appear too advanced for the immediate undertaking, it should not be discarded completely but reconsidered at a later date once a permanent joint commission with administrative powers has been established and is functioning smoothly.

It would seem that the matter of primary importance at present is the creation of a commission which is effective in the joint administration of boundary waterways and related projects and which is capable of advising and submitting recommendations to the two Governments with respect to their administration.

Enclosure No. 4 to Despatch No. 467, dated August 11, 1947
from American Embassy, Tehran, Iran.

Tehran, Iran
July 28, 1947.

MEMORANDUM: Interview with the Afghan Ambassador Regarding
Material on the International Joint Commissions
Between the United States and Canada and the
United States and Mexico.

On July 19, 1947 I called on the Afghan Ambassador and delivered to him the memorandum which I had prepared on the material relating to the International Joint Commissions between the United States and Canada and the United States and Mexico. Although the documents which I used in preparing the report were to be made available to the Afghan Government through our Legation at Kabul, His Excellency had requested a brief report concerning the nature of this material in order to be "au courant" with discussions between his Government and the Iranian Government.

I endeavored to explain briefly the contents of the report, following which His Excellency related the facts of the Helmand River dispute between Afghanistan and Iran and asked how this specific case would be handled by the International Joint Commission between the United States and Canada. I prefaced my reply with a comment to show to what extent both Canada and the United States had relinquished some of their sovereign rights in order that the Joint Commission might be authorized to settle such cases. It was difficult for his Excellency to grasp this point, and I might add that he was reluctant to do so.

His Excellency agreed that the bonds uniting Iran and Afghanistan were somewhat similar to those existing between Canada and the United States, but he maintained that any interference in the internal affairs of his country violated the national sovereignty of Afghanistan, and that therefore, it was doubtful that his Government would take steps to create a commission fully empowered to handle such matters. His Excellency admitted that the proposed river project presented Iran with a serious problem, but he added that it did not entitle Iran to interfere in Afghan domestic affairs, and that therefore another solution must be sought.

His Excellency expressed deep appreciation to Ambassador Allen for having this material made available to him, and stated that a copy of the memorandum would be sent to the Foreign Office in Kabul.

/s/ Betty Lou Firstenberger.